

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

BOARD OF TRUSTEES, GALLATIN)	
COUNTY SCHOOL DISTRICT NO. 7 and)	
PAULA BUTTERFIELD, SUPERINTENDENT,)	
)	
Appellants,)	OSPI 215-92
)	
vs.)	<u>DECISION AND ORDER</u>
)	
MARTHA QUICK,)	
)	
Respondent/Cross-Appellant.)	

* * * * *

PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

Respondent/Cross-Appellant Martha Quick (Dr. Quick) was the Assistant Principal of Chief Joseph Middle School, School District No. 7, Bozeman, Montana. Dr. Quick held an administrator's contract with the District. Beginning on or about February 7, 1991, Dr. Paula Butterfield, District Superintendent, and Dr. Quick became involved in a flurry of activity which resulted in a number of documents being placed in Dr. Quick's personnel file. Believing that these documents were placed in her personnel file in violation of District policy, Dr. Quick appealed the action of the Superintendent to the Board of Trustees. The Trustees heard the appeal and issued their decision on May 13, 1992. Being dissatisfied with the decision of the Board, Dr. Quick appealed their decision to the Gallatin County Superintendent of Schools. The County Superintendent heard the appeal and issued her Findings of Fact, Conclusions of Law and Order removing several of the

documents on August 21, 1992. The District appealed the Order of the County Superintendent to the State Superintendent of Public Instruction and Dr. Quick filed a cross-appeal.

The Appellant District raised the following issues:

1. Whether the County Superintendent had jurisdiction to hear the Respondent's appeal of the Board of Trustees' decision because the appeal was not a contested case pursuant to ARM 10.6.102(4) and because Mont. Code Ann. § 20-3-210 does not grant a general right to appeal; and
2. Whether those portions of Mont. Code Ann. § 20-3-210(3) and those portions of ARM 10.6.106 through 10.6.119 which allow an appeal of a board of trustees' decision to the County Superintendent to be a de novo hearing whereby testimony and evidence not submitted to the board of trustees is heard by the County Superintendent is unconstitutional as an infringement on the supervision and control of schools granted to boards of trustees pursuant to Article X, Section 8, 1972 Montana Constitution.

Cross-Appellant Martha Quick raised the following issues:

1. Whether the County Superintendent erred in granting Appellant District's Motion to Dismiss Petitioner's claim surrounding Exhibit 15 dated June 20, 1991, on the basis of mootness;
2. Whether Finding of Fact No. 26 of the Findings of Fact, Conclusions of Law and Order is clearly erroneous; and
3. Whether Conclusion of Law No. 14 is clearly erroneous and affected by error of law.

STANDARD OF REVIEW

This Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and

conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County and Nancy Keenan, 731 P.2d 1318, 241 Mont. 272 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 714 P.2d 151, at 153, 220 Mont. 214, at 217 (1986).

The State Superintendent may not substitute her judgment for that of a County Superintendent as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 676 P.2d 194, at 198, 208 Mont. 33, at 40 (1984).

Conclusions of law are subject to more stringent review. Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990).

DECISION AND ORDER

The County Superintendent has jurisdiction to hear this matter. Parties to a contract have a legal right to have the terms of the contract interpreted and enforced following an opportunity for hearing. The Montana Supreme Court in Throssell v. Gallatin County School District No. 7, 757 P.2d 348, 232 Mont. 497, 45 St.Rep. 1228 (1988), held that a county superintendent has juris-

diction to hear a contract dispute between a district and a district administrator.

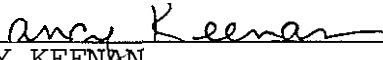
Section **20-3-210(3)**, MCA, and the administrative rules adopted by the Superintendent of Public Instruction, ARM **10.6.106** through **10.6.119**, are constitutional and **do** not infringe on the constitutional authority of boards of trustees under Article **X**, Section **8**, **1972** Montana Constitution. School District No. **12**, Phillips County v. Hushes, **552 P.2d 328, 170 Mont. 267 (1976)**.

The following sentence in Finding of Fact No. **26**: "According to Dr. Quick she did not receive written notice about the meeting but was verbally told that it concerned a violation of probation" is **HEREBY MODIFIED** to delete the above-quoted sentence. This statement of finding is clearly erroneous in that it is not supported by substantial evidence in the record. Likewise, there is no evidence in the record to support the following sentence in Conclusion of Law No. **14**: "However, prior to the meeting on October **29, 1991**, which resulted in Petitioner being suspended with pay by the Superintendent, Petitioner was afforded due process when she was told that the meeting involved a possible probation violation." Conclusion of Law No. **14** is **HEREBY MODIFIED** to delete the above-quoted sentence. Conclusion of Law No. **14** as modified is a correct statement.

The County Superintendent did not err in granting the District's Motion to Dismiss that part of the Notice of Appeal requesting that the June **20, 1991**, Memorandum (Exhibit **15**) be vacated.

The Findings of Fact, Conclusions of Law and Order of the
County Superintendent is AFFIRMED AS MODIFIED.

DATED this 2 day of February, 1994.



NANCY KEENAN

CERTIFICATE OF SERVICE

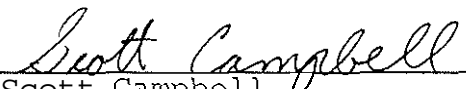
THIS IS TO CERTIFY that on this 2d day of February, 1994, a
true and exact copy **of** the foregoing Decision and Order was mailed,
postage prepaid, **to** the following:

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